

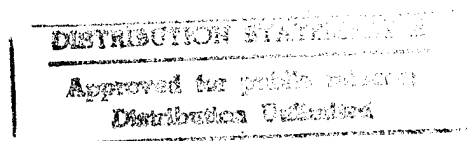


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## JAPANESE SUPPORT TO SOUTH KOREA IN WARTIME

*A Report Prepared under an Interagency Agreement  
by the Federal Research Division,  
Library of Congress*

March 1985



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19960712 023

*Federal Research Division  
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# REPORT DOCUMENTATION PAGE

Form Approved  
OMB No. 0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188), Washington, DC 20503.

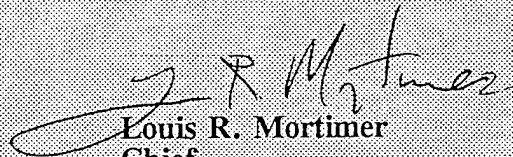
1. AGENCY USE ONLY (Leave Blank)		2. REPORT DATE March 15, 1985		3. REPORT TYPE AND DATES COVERED Final	
4. TITLE AND SUBTITLE Japanese Support to South Korea in Wartime				5. FUNDING NUMBERS	
6. AUTHOR(S) Neal A. Marcot William Shaw					
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Federal Research Division Library of Congress Washington, DC 20540-4840				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES) N/A				10. SPONSORING/MONITORING AGENCY REPORT NUMBER	
11. SUPPLEMENTARY NOTES Prepared under an Interagency Agreement					
12a. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited.				12b. DISTRIBUTION CODE	
13. ABSTRACT (Maximum 200 words)  This study assesses the degree of support, if any, that Japan might provide to the Republic of Korea in a renewed Korean conflict. Five possible Japanese responses have been posted and evaluated on the basis of key intrastate and interstate variables, including Japanese law, key Japanese security statements, the security viewpoints of relevant Japanese policymakers, Japanese public opinion, and Japan's security relationship with the United States, South Korea, and other major actors in the Asia-Pacific region.					
14. SUBJECT TERMS  Japan South Korea Military aid  Foreign relations				15. NUMBER OF PAGES 59	
				16. PRICE CODE	
17. SECURITY CLASSIFICATION OF REPORT  UNCLASSIFIED	18. SECURITY CLASSIFICATION OF THIS PAGE  UNCLASSIFIED	19. SECURITY CLASSIFICATION OF ABSTRACT  UNCLASSIFIED	20. LIMITATION OF ABSTRACT  SAR		

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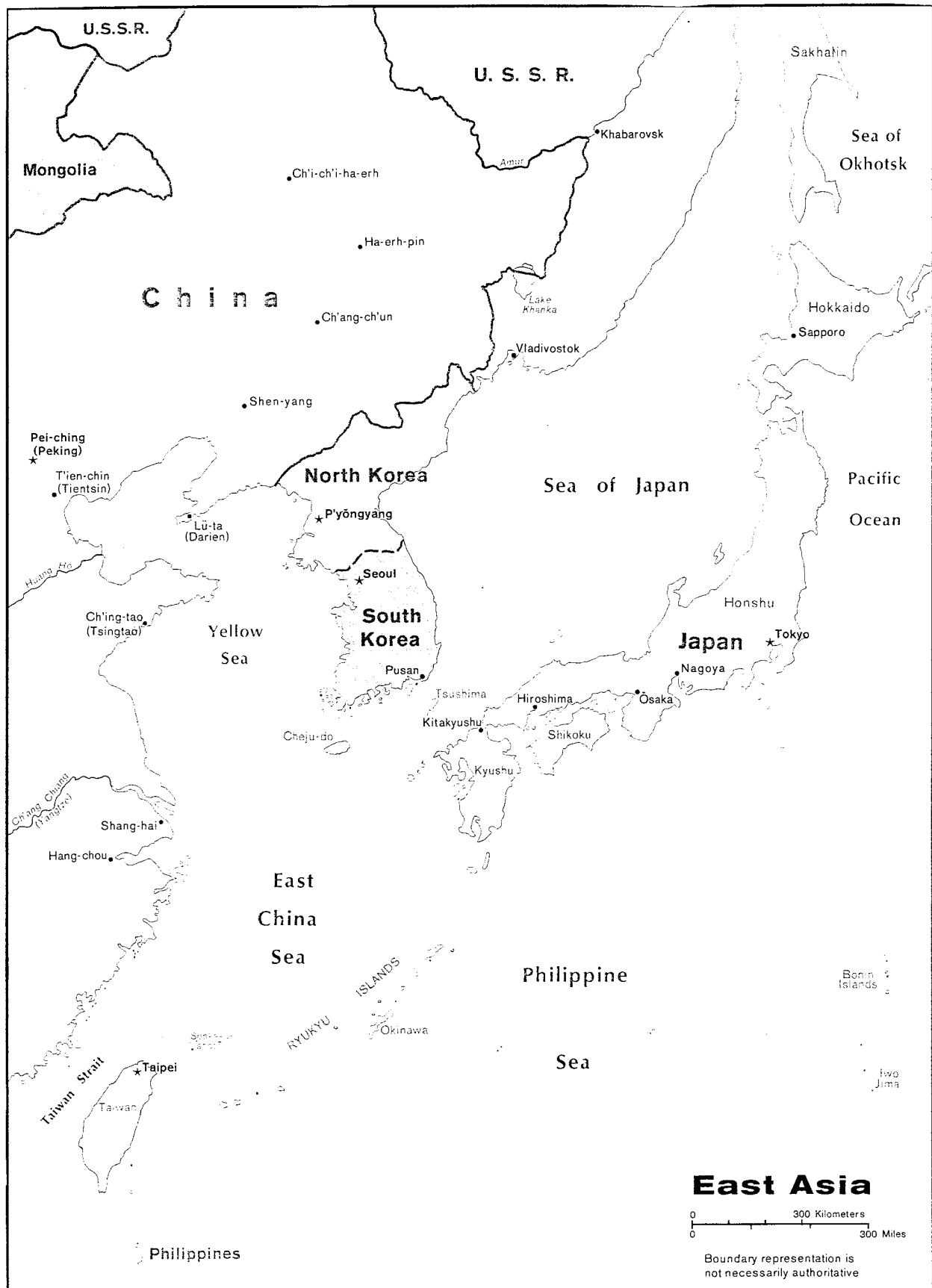
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## PREFACE

This study assesses the degree of support, if any, that the Government of Japan might provide to the Republic of Korea (ROK) in a renewed Korean conflict. Five possible Japanese responses have been posited and evaluated on the basis of key intra- and interstate variables including Japanese law, key Japanese security statements, the security viewpoints of relevant Japanese policy-makers, Japanese public opinion, and Japan's security relationship with the United States, South Korea, and other major actors in the Asia-Pacific region.

Information for this study, the information cutoff date for which is 15 March 1985, has been derived solely from primary and secondary open-source literature in Japanese and English. Interviews with Japanese and US policy-makers have also been conducted.



Map - East Asia

## CONTENTS

	<u>Page</u>
SUMMARY -----	vi
1. INTRODUCTION -----	1
2. DIRECT JAPANESE MILITARY SUPPORT TO THE ROK THROUGH THE USE OF JAPANESE TROOPS ON THE KOREAN PENINSULA -----	3
a. Japanese Constitutional Interpretations -----	3
b. Japanese Policy Statements -----	4
c. Self-Defense Forces Law -----	4
d. Public Opinion -----	5
e. Conclusion -----	6
3. JAPANESE COMBAT SUPPORT TO THE ROK CONDUCTED FROM OUTSIDE THE KOREAN PENINSULA -----	6
a. Japanese Constitutional Interpretations -----	6
b. Military Conscription Ban -----	8
c. Public Opinion -----	8
d. Nuclear Policy -----	9
e. Sea Blockade -----	10
f. Conclusion -----	11
4. JAPANESE MILITARY RELATED ASSISTANCE TO THE ROK SHORT OF A DIRECT COMBAT ROLE -----	11
a. Japan-ROK Mutual Perceptions -----	11
b. Japan-ROK Political/Economic Relations -----	12
c. Japan-ROK Security Relations -----	13
d. Conclusion -----	15

	<u>Page</u>
5. JAPANESE INDIRECT ASSISTANCE TO THE ROK THROUGH US USE OF JAPANESE BASES IN SUPPORT OF AN AMERICAN COMBAT ROLE -----	18
a. Mutual Security Treaty--Prior Consultation -----	18
b. Geographic Scope of "Far East Clause" -----	21
c. Joint Communiques -----	22
d. Conclusion -----	23
6. JAPANESE INDIRECT MILITARY SUPPORT TO THE ROK THROUGH USE OF JAPAN'S MILITARY-INDUSTRIAL INFRASTRUCTURE TO SUPPORT THE AMERICAN MISSION SHORT OF A DIRECT COMBAT ROLE -----	25
a. Japan-US Relations -----	25
b. Conclusion -----	26

#### APPENDIX

Constitutional and Legal Aspects of Japanese Support -----	34
Table 1 Official Statements Interpreting the Law or Constitution on Issues of Importance for Facilitative Assistance -----	51
Table 2 Japanese Sea Lane Defense Doctrine -----	56

#### ILLUSTRATION

Map - East Asia -----	iii
NOTES -----	31

## SUMMARY

Five Japanese responses to provide assistance to the Republic of Korea in an outbreak of war on the Korean Peninsula have been posited in this study. It has been concluded that Japan could not provide direct military combat assistance to the ROK either through direct interdiction on the Korean Peninsula or from outside the peninsula because of the constitutional constraints as defined by the Japanese Government; Self-Defense Forces (SDF) law; the limited security role that Japan envisages for itself; and a general wariness on the part of the Japanese public and its policymakers that such overt military actions might precipitate a wider war involving the superpowers, and ultimately result in the decimation of the home islands.

Military assistance to the ROK short of direct combat was viewed to be limited in its scope due to the nascent ROK-Japan security relationship. Both the ROK and Japan have shied away from bilateral and collective security arrangements. However, because the political economic relationship between Tokyo and Seoul has improved, despite its checkered past, four areas were posited as possibilities for Japanese assistance to the ROK: export of dual-use items, credits, intelligence sharing, and humanitarian relief of refugees. It was concluded that US use of Japanese bases as a staging area and embarkation point for conflict in Korea was likely due to the liberal precedents Japan has set in its interpretation of the prior consultation as it pertains to both basing rights and passage of nuclear weapons. However, four possibilities were hypothesized as resulting in a tightening or elimination of US base privileges: hot pursuit from North Korea; blackmail from the Soviet Union; uprisings within Japan from supporters of Kim Il Sung; and the US threat of using nuclear weapons on the Korean Peninsula. The fifth and final response posited was indirect Japanese support to the ROK through US exploitation of Japan's military-industrial infrastructure. Because of strong US-Japan ties, Japan's response was anticipated in the following areas: 1) increased maintenance costs and upkeep of US bases in Japan; 2) technology transfer; 3) shipping of critical commodities; 4) repair and maintenance in offshore environs; 5) intelligence sharing; 6) dual-use exports; and 7) credits.



Five areas in which the United States would like Japan's support but which would require legal changes for Japan to cooperate include: transport of US military personnel and materiel; rescue operations, medical care, equipment repair, and the procurement of ammunition.

## JAPANESE SUPPORT TO SOUTH KOREA IN WARTIME

### 1. INTRODUCTION

In a renewed Korean conflict, the wartime scenario, for the purposes of this analysis, would originate with a planned invasion by the Democratic People's Republic of Korea (DPRK) Armed Forces across the 38th parallel into the Republic of South Korea (ROK). The invasion would be precipitated by deep-seated and longstanding ROK-DPRK differences rather than intensified superpower rivalries, either regionally or worldwide. Chinese and Soviet troops would not be mobilized for direct military involvement in the Korean conflict. However, the Soviet Union and China, not to be outdone by each other, would provide sea and airborne logistical support to their North Korean client. The United States, under the rubric of the United Nations Command, would mobilize its forces in the Pacific for air and seaborne operations to regain control of the southern half of the Korean Peninsula. Actual combat would not spill over onto the Japanese archipelago nor would Japanese shipping come under imminent danger of interdiction.

Given the above scenario, Japan's conceivable support to the ROK falls within five possible responses:

°Direct Japanese military support to the ROK through the deployment of Japanese troops to the Korean Peninsula,

°Japanese combat support of the ROK conducted from outside the Korean Peninsula,

°Japanese military-related assistance to the ROK short of a direct combat role,

°Japan's indirect assistance to the ROK through US use of Japanese bases in support of an American combat role, and

°Use of Japan's military-industrial infrastructure to support the American mission short of a direct combat role.

Based upon an evaluation of key intra- and interstate variables, this study analyzes the likelihood of each of the foregoing responses. Key variables evaluated include Japanese legal systems (that is Japan's constitution, Self-Defense Forces Laws, and other laws and ordinances); key Japanese security statements; the security viewpoints of relevant Japanese policymakers; Japanese public opinion; and Japan's security relationship with the United States, the ROK, as well as other major powers in the Asia-Pacific region.

The Appendix to the study provides additional technical details on constitutional and legal aspects of the issue of Japanese support in a possible Korean war.

2. DIRECT JAPANESE MILITARY SUPPORT TO THE ROK THROUGH THE USE OF JAPANESE TROOPS ON THE KOREAN PENINSULA

a. Japanese Constitutional Interpretations

In security debates before the Diet, the Japanese Government has consistently reiterated the position that the overseas deployment of Japanese troops for the purpose of conducting military actions within the territorial confines of other states--whether conducted by ground forces, ships, or aircraft--exceeds the limit of the right of self-defense and is therefore prohibited under Article 9 of Japan's 1947 Constitution. Japanese courts have never definitively ruled on the constitutionality of the Self-Defense Forces (SDF) and thus have implied recognition of the SDF as a legal entity. Moreover, the courts have never defined the proper role or limitations of the SDF under Article 9.<sup>1</sup> In 1977, the Mito District Court decided that the issue of whether the SDF were offensive forces exceeding the limits required for defense was a political question outside the scope of judicial review. It, therefore, has been left to successive Japanese governments to interpret the constitutional limitations of the SDF. One of the constitutional limitations that the Japanese Government has placed upon the SDF is that it cannot be deployed to another country for combat purposes, even in wartime. As stipulated:

The government believes that the constitution does not permit it to dispatch forces carrying arms to foreign territorial land, sea, and air for the purpose of using force, because such deployment of troops overseas generally goes beyond the minimum limit necessary for self-defense.<sup>2</sup>

b. Japanese Policy Statements

The framework which has regulated Japan's defense policy for nearly three decades, especially with regard to dispatch of troops overseas, has been the Basic Policy for National Defense, adopted in 1957 and never since fundamentally altered. It states that Japan's basic defense posture is defined as "exclusively defensive." This has been interpreted to mean that Japan will not activate its defense forces until it comes under armed attack or when an attack appears "imminent." Even then, the level of military response will be the minimum required for self-defense. Japan, therefore, will not take a strategic offensive posture such as attacking enemy bases and will adopt a "passive" defensive strategy in which the use of defensive forces are restricted to Japanese territory and surrounding areas. The Japanese have not definitively stated what constitutes surrounding areas:

The necessary minimum force to defend Japan employed in the execution of her right of self-defense is not necessarily confined in the geographic scope to the Japanese territorial land, sea, and air. However, it is difficult to make a wholesale definition on how extensive this geographic area stretches because it would vary with separate individual situations.<sup>3</sup>

c. Self-Defense Forces Laws

Japanese policymakers have also justified the non-deployment of SDF forces overseas. Based on SDF laws, this prohibition extends even to SDF participation in UN peacekeeping operations. In Diet interpellations over the years, government officials have claimed that although Japan's participation

in a peacekeeping force is permissible under the Constitution, it has not been provided for in existing SDF laws, and is therefore prohibited.

In September 1984, a Japan-US advisory committee, formed as a result of the Reagan-Nakasone summit, recommended that Japan join multilateral peacekeeping operations "through logistical support as well as the dispatch of non-uniformed and possibly uniformed personnel."<sup>4</sup> As it had done in the past, key Japanese defense officials, including Defense Agency Head Yuko Kurihara, rejected the Joint Advisory Committee recommendation out-of-hand as contravening SDF laws.<sup>5</sup>

d. Public Opinion

Another important factor mitigating against the possible dispatch of troops overseas is a consensus among Japanese policymakers and citizens alike which would object to such a maneuver. As perceived by the Japanese, such a general dispatch might widen the war, result in superpower confrontation, and lead ultimately to the decimation of the Japanese home islands.

While there is a general consensus within Japan for gradually expanding the role of the SDF, strains of pacifism are still present within the body politic. Such an overt strategem as the overseas dispatch of troops would be perceived as going well beyond the limited mission envisaged for the SDF. In the spring of 1983 Yomiuri Shimbun asked the Japanese population what it would do if Japan were invaded by a foreign power. An astonishing 44 percent of the Japanese respondents confessed they would run away or surrender and the figure rose to 54 percent when youths between the ages of 15 and 24

were asked the question. Only 20.6 percent of those polled were willing to take up arms against the aggressor.<sup>6</sup> Similarly, Tokyo's Sankei Shimbun in December 1978 asked the public this question: In case a war broke out on the Korean Peninsula what position should Japan take toward the ROK? Only 0.1 percent opted for dispatch of Japanese troops to the Peninsula while 70.9 percent opted for diplomatic moves toward an armistice.<sup>7</sup>

e. Conclusion

Based upon constitutional and SDF laws, Japan's national security statements, and a general consensus among the populace and ruling elites, it is very unlikely that Japan would send troops to the Korean mainland to assist the ROK against a military invasion from North Korea.

3. JAPANESE COMBAT SUPPORT TO THE ROK CONDUCTED FROM OUTSIDE THE KOREAN PENINSULA

a. Japanese Constitutional Interpretations

In its policy statements, Japan has made a clear distinction between offensive and defensive weapons, with offensive weapons banned under Article 9 but defensive weapons permitted. However, the government has never published an authorized list or established a coherent policy to differentiate offensive from defensive weapons. However, Japan, through its policy statements, has stated it could not possess or supply to any other country such weapons as long-range missiles or bombers, like the B-52, because possession of such weapons is unconstitutional:

There is no denying that the specific limit of the necessary minimum armed strength for self-defense permissible under constitutional limitations carries with it a relative aspect that is subject to change in the prevailing international situation, the standards of military technology and various other conditions. However, it is evidently under constitutional prohibition that Japan cannot possess weapons which from the standpoint of their performance are used exclusively for total destruction of other countries, such as ICBM's, and long-range strategic bombers.<sup>8</sup>

Nevertheless, F-4/Phantoms, Nike ground-to-air guided missiles, and HAWK missiles are considered defensive weapons and therefore permissible under the Constitution. The Japanese Government, in February 1978, also justified the purchase of F-15 interceptor-fighters and P-3C antisubmarine aircraft on the premise that they were defensive weapons. The Government's logic regarding the F-15 and P-3C procurement was explained as follows:

°The war potential banned by the second section of Article 9 means a capacity exceeding the minimum necessary for self-defense, and the specific limits of the defense capacity is relative to the international situation, level of military technology, etc.;

°The F-15 and P-3C acquisitions are merely replacements for the attrition of equipment and are principally defensive aircraft, which fits the SDF policy of "exclusively defense.";

°Therefore, the introduction and maintenance of this equipment does not constitute the war potential prohibited by the Constitution.



Nevertheless, Japanese policymakers make a clear distinction between the possession of weaponry and its actual use. The combat activation of such fighter aircraft as the F-15 can only occur when Japan comes under attack or is in imminent danger of attack and even then the level of defense force commitment would be the "minimum required for self-defense."<sup>9</sup>

b. Military Conscription Ban

Even if Japan wanted to mobilize its forces for combat outside of the Korean Peninsula, the sustainability of Japan's effort would be hampered by constitutional constraints against universal military conscription. The constraints would also apply under wartime conditions. Conscription is unconstitutional, according to the Japanese Government's interpretation, based upon Articles 13 and 18 of the Constitution. Article 13 states that the people's rights shall be respected in governmental affairs as long as individual rights do not interfere with the public welfare. Article 18 states that "involuntary servitude except as punishment for a crime is prohibited, and no one shall be held in bondage of any kind." The government has never used Article 9 as a basis for banning military conscription in Japan.<sup>10</sup>

c. Public Opinion

Japanese policymakers rarely discuss the use of military force on the Korean Peninsula. Such deployment would be widely opposed on the belief that it would widen the conflict, potentially involve the United States and the Soviet Union in hostilities, lead to the severing of Japan's vital sea lanes of communication, or extend the war to the Japanese home islands.

d. Nuclear Policy

Japan has consistently stated that it will not possess nuclear weapons. This prohibition is based not only on the constitutional constraint of Article 9, but also has been stated as a matter of policy. In January 1968, at the 58th Regular Session of the Diet, Prime Minister Eisaku Sato defined Japan's nuclear policies:

°The Three Nuclear Principles (not to manufacture, possess or allow the importation into Japan of nuclear weapons);

°The Government's concerted efforts toward worldwide nuclear disarmament;

°Dependence on the nuclear umbrella of the United States based on the US-Japan Security Treaty; and

°Peaceful uses of nuclear energy.

The Atomic Energy Law of 1946 also has been cited as prohibiting offensive nuclear weapons. Article 2 of that law states:

The research, development, and utilization of atomic energy shall be limited to peaceful purposes and performed independently under democratic management; the result therefrom shall be made public to contribute to international cooperation.<sup>11</sup>

When Japan became a signatory country to the Nuclear Non-Proliferation Treaty in 1976 the Japanese Government also cited the treaty as banning the possession and deployment of any nuclear weapons.

Despite Japan's firm opposition to nuclear weapons, official government policy has maintained that the Constitution does permit defensive tactical nuclear weapons. When challenged in the Diet to distinguish offensive from defensive nuclear weapons, the government has admitted that it is difficult to make such a distinction. However, it has stated that defensive nuclear weapons might include nuclear mines or anti-air missiles. In any event, Japan has never manufactured or possessed any nuclear weapons, including the tactical variety.

In July 1984, Japan stated that it had no plans to enact a law governing its principles against production, possession, or introduction of nuclear weapons. The government held that "the three principles are already well known both at home and abroad and they do not need to be put into law."<sup>12</sup> The government also stated that it did not favor the idea of concluding an international agreement banning the use of nuclear weaponry because such an accord could not be implemented.

e. Sea Blockade

Since 1980 the United States has been urging Japan to develop a blockade capability for times of emergency in the three straits located in Japanese territorial waters: Soya, Tsugaru, and Tsushima. It is very unlikely that this would be done under wartime conditions because Japanese officials

repeatedly have indicated that they would not blockade the straits unless Japan were under imminent threat of attack. To lay mines in the straits, according to the Japanese Government, would contravene international law and might incite the Soviet Union into an offensive posture against Japan.

f. Conclusion

Based upon Japanese governmental leaders' interpretation of constitutional law, Japan's national security statements, including those relating to nuclear policy and a sea blockade, and a consensus among ruling elites and the population at large, there is little likelihood that Japan would provide combat support to South Korea from outside the Korean Peninsula.

4. JAPANESE MILITARY RELATED ASSISTANCE TO THE ROK SHORT OF A DIRECT COMBAT ROLE

a. Japan-ROK Mutual Perceptions

In an Asahi Shimbun poll published in October 1984, Japanese respondents were asked to name on country to which Japan should establish the closest ties. The poll indicated that 43 percent selected the United States, 20 percent indicated the People's Republic of China, 3 percent favored the Soviet Union, and only 1 percent indicated South Korea.<sup>13</sup> In the same poll, 47 percent of the respondents said they did not feel closeness to South Korea and 44 percent said they did. In 1983 Asahi Shimbun conducted the same poll as it had in 1984. The results of the 1983 poll revealed that 51 percent of the Japanese respondents said they did not feel a closeness to the ROK and

39 percent of the respondents said they did. The results of these two polls show that Japan's perceptions of South Korea remain low (when compared to other countries like the United States and China), but have improved in recent years. Similar results from South Korean respondents about Japan have also been recorded.<sup>14</sup>

b. Japan-ROK Political/Economic Relations

How Japanese and Korean peoples view each other has been reflected in their checkered political/economic relationship over the past 20 years. After the normalization treaty was signed in 1965, ties between the two countries improved considerably. South Korea became Japan's largest trading partner. In the early 1970s, however, relations turned sour due to the kidnaping of Korean opposition leader Kim Dae Jung, reportedly by Korean security agents, from his hotel room in Japan. The assassination of the wife of President Park Chung Hee by a Korean resident of Japan in 1974 led to additional cooling between the two countries. Relations improved in 1980 after South Korean President Chun Doo Hwan commuted Kim Dae Jung's death sentence for treason. Kim subsequently left South Korea for the United States, but has returned to South Korea where he remains under house arrest.

In September 1981, Japan-ROK ministerial level meetings were revived after a 3-year hiatus. Relations were strained again in 1982 when South Korea took the position that Japan owed part of its peace and security to South Korea's large defense responsibility and, therefore, should give the ROK \$6 billion in Overseas Development Assistance (ODA). The aid issue was finally resolved prior to the Nakasone-Chun summit in Seoul in 1983. Instead

of \$6 billion, the ROK agreed to accept \$4 billion in aid spread out over 7 years.

c. Japan-ROK Security Relations

Prime Minister Yasuhiro Nakasone's trip to South Korea in January 1983 was instrumental in improving the Japan-ROK security relationship; although that phase of the relationship has remained limited. The two leaders agreed that the Korean clause which had over the years appeared in various forms in Japan-US communiques, would appear in a Japan-ROK communique for the first time. It also was agreed "that the maintenance of peace and security on the Korean Peninsula was important for the peace and stability of East Asia, including Japan." In a concession to President Chun, who found it difficult to accept the \$4 billion loan package otherwise, Nakasone expressed his "high regard" for South Korea's defense efforts in the "harsh circumstances which currently affect the Korean Peninsula." In Chun's return visit to Tokyo in September 1984, the first official visit by a Korean head of state to Japan in the post-war period, top military leaders from both countries exchanged brief visits as they had been doing since 1979.

(1) No Formal Bilateral Security Ties

Despite the recent improvements in Japan-ROK bilateral security relations, formal security ties through a mutual security treaty do not seem likely in the immediate future. This has been stated by key leaders in both Seoul and Tokyo. In November 1983, South Korean Foreign Minister Won-Kyung Lee indicated to the ROK National Assembly's Foreign Affairs Committee a

desire for a more active Japanese defense contribution to his country. However, he ruled out the possibility of a mutual security arrangement. He repeated this theme in an interview with the Journal of Northeast Asian Studies a short time later:

Considering the internal and external atmosphere which is based on past historical memories, Korean-defensive collaboration is not probable in the near future. Thus, at this stage within the existing Korean-American defense structure and the Japanese-American defense structure both countries should maintain close cooperation in order to sustain peace and stability in this region.<sup>15</sup>

Additionally, Prime Minister Nakasone, prior to his departure to Seoul in January 1983 denied that his visit to the ROK was a prelude to a bilateral military treaty:

While Japan has a 1960 Security Treaty with the United States, it has no military ties with South Korea. We have different kinds of relationships with the United States and Korea. As to Korea we give it economic cooperation to make it more stable.<sup>16</sup>

## (2) No Collective Security Ties

Japan has also ruled out collective security links with the ROK. Japan has contended that in accordance with the provisions of the United Nations Charter, it is a sovereign nation and has the right of collective self-defense, but according to its interpretation of the constitution, the right of collective self-defense exceeds the minimum necessary for the defense

of the country and is therefore impermissible.<sup>17</sup> Based upon its collective security ban, Japan--most recently through its Ambassador to South Korea, Toshikazu Maeda--indicated in March 1984 that it could not assist Korea militarily in times of emergency on the Korean Peninsula.<sup>18</sup>

d. Conclusion

Because the Japan-ROK relationship is only in a nascent stage and Tokyo and Seoul have ruled out both formal bilateral or collective security as viable options for the foreseeable future, the feasibility of Japanese assistance to the ROK short of direct military support in wartime would be limited. It is unlikely, for instance, that Japan would provide the ROK with such wartime assistance as basing or docking privileges, nor would it make repair and maintenance or transportation facilities directly available to South Korea. However, due to the improving political/economic relationship, there are four areas where Japan might provide the ROK with needed assistance: dual-use export items, export credits, intelligence sharing, and humanitarian aid to refugees.

(1) Dual-Use Export Items

In April 1967, the Japanese Cabinet banned arms sales to Communist countries, countries to which arms sales were banned by UN resolution, or countries involved or likely to be involved in armed disputes. In 1972, Japan's Ministry of International Trade and Industry (MITI) proclaimed a policy of banning exports to countries not covered by the 1967 ban. In February 1976, Japan amended this to read that the government would be



cautious about export of arms to areas other than those covered by the three restrictions, and the export of equipment related to the production of arms would be treated as the same as arms. The Japanese Government authorized this tightened policy in consonance with the spirit of the constitution and the Foreign Exchange and Foreign Trade Control Law. Arms banned are spelled out in the Export Trade Control Order and include the following: firearms, explosives, gunpowders, explosive stabilizers, military vehicles and their parts, military vessels, military aircraft, armor plating, military search lights and their controlling apparatus, and bacterial, chemical and radioactive preparations for the military.<sup>19</sup>

Despite this rather extensive ban on weapons, Japan has adopted a liberal interpretation about the legality and propriety of dual-use items. These might be especially helpful to the South Korean cause. Dual-use items sold and declared legal within Japan have included: computers, trucks, helicopters, hydrofoils, fighter simulators, aircraft bearings, titanium ceramics. Optical fibers and industrial ceramics might be especially helpful to the South Koreans. Optical fibers protect military communications from enemy electronic countermeasures, and industrial ceramics can be used as engine materials, solar batteries, or housing for microelectronic chips.<sup>20</sup>

## (2) Credits

Because of Japan's close credit ties with South Korea, as evidenced by the \$4 billion ODA package signed in 1983, precedents have been established which would enable Korea to make additional borrowings during a possible war. These credits could be used to buy needed weaponry or critical

logistical materiel. It also should be noted that Japan has recently overtaken Saudi Arabia as the largest creditor nation in the world.

### (3) Intelligence Sharing

Because of Japan's military cooperation with the United States, the Japanese air defense system is tied into the South Korean radar system. The two countries currently share not only early warning data but have their fighter pilots using the same codes. There is also allegedly covert cooperation on both sides of the Korean Straits between the South Korean and US Navies and Japan's Maritime Self-Defense Force to monitor Soviet submarine movements.<sup>21</sup> Although there are SDF legal constraints on these practices, they have continued and might even be upgraded during a war on the Peninsula.

### (4) Humanitarian Aid--Refugees

It is generally assumed by strategic commentators that a war on the Korean Peninsula would result in the influx to Japan of at least a half-million to a million Korean refugees. Japan might accept some of these refugees on humanitarian grounds; it also might attempt to limit such migration as it did with the Vietnamese boat people. Japan might contend that such a large emigration might put undue strain on the country's social services. Japan would also be concerned that the refugee influx would exacerbate divisions among Koreans already living in Japan between those backing Seoul and those supporting Pyongyang.

5. JAPANESE INDIRECT ASSISTANCE TO THE ROK THROUGH US USE OF JAPANESE BASES IN SUPPORT OF AN AMERICAN COMBAT ROLE

a. Mutual Security Treaty--Prior Consultation

On 19 January 1960, Japan and the United States signed a revised Treaty of Mutual Cooperation and Security. The three main features of the treaty include:

1. US obligation to help defend Japan (Japan is not obligated to the defense of the United States or its people);
2. Japanese commitment to build a moderate-sized conventional defense establishment and to defend territories under its jurisdiction; and
3. The right of the United States to maintain facilities in Japan to support the American commitment throughout East Asia. The most critical clause relating to US base rights is contained in Article 6, commonly referred to as the Far East Clause.<sup>23</sup>

At the same time of the signing of the Mutual Security Treaty President Eisenhower and Prime Minister Kishi exchanged notes which elaborated upon the meaning of Article 6. Under the exchange of notes, the United States assured Japan that it would engage in "prior consultation" before undertaking major deployments of American forces to Japan, making major changes in combat equipment in Japan, or using Japanese bases for combat operations to be undertaken

outside of Japan. The US and Japanese Governments subsequently agreed that in terms of force changes, sizes requiring consultation would be one army division, one naval task force or one air force division of 75 fighter-bombers. "Equipment" meant nuclear weapons, intermediate and long-range missiles, or the construction of missile sites or launchers. Japan and the United States have agreed that "prior consultation" means prior Japanese approval. This was confirmed in the Eisenhower-Kishi Joint Communique which was issued simultaneously with the signing of the 1960 Mutual Security Treaty. The communique stated in part: "The United States Government has no intention of acting in a manner contrary to the wishes of the Japanese Government."

Despite the apparent veto power which Japan might exercise over US base rights in Japan, the Japanese Government has never invoked the clause to inhibit US base activity in East Asia because of the liberal interpretation which they have given to the term "combat operations." The Government, in agreement with the United States, has stressed that the term "combat operations" does not simply mean going into a combat area. Rather, "combat operations requiring prior consultation" signifies the American use of a base in Japan for launching actual combat operations. For example, US aircraft taking off from a Japanese base to bomb another area would require prior consultation as would troops embarking from Japan which went directly into combat. Similarly, a plane or ship in Japanese territory which was ordered into combat would require prior consultation. However, if a ship leaves a port and then is ordered into combat, prior consultation is unnecessary. The same applies to forces going into a combat zone but not engaging directly in combat upon arrival, such as ships supplying food or materials to a combat zone. In fact, all naval vessels, including nucleared-powered ones, have been free to come

and go. Nor has the Japanese Government made an issue of US naval vessels calling at their bases in Japan en route to or from a combat zone. Also escaping scrutiny have been aircraft in or passing through Japan or being transferred elsewhere in order to eventually engage in combat. In sum, "combat operations" are implicitly understood by both governments to mean specifically an American aircraft taking off from a Japanese base, bombing an overseas area, and returning to a Japanese base. Otherwise, movements of forces, aircraft, or ships not involved in direct combat operations from Japan are excluded from prior consultations.<sup>24</sup>

#### (1) Nuclear Question and Prior Consultation

Japan and the United States have also developed a liberal interpretation of prior consultation as it relates to the entry of US nuclear-armed ships in Japanese territorial waters. It is generally assumed that the storage and deployment on Japanese soil of nuclear weapons would require prior consultation. However, it has not always been clear whether the transit of nuclear weapons constitutes a "major change" in deployment or whether nuclear weapons could be stored off the coast of Japan. In May 1981, U. Alexis Johnson, former US Ambassador to Japan, reported that in 1961 the United States had atomic bombs in landing ships in Japanese territorial waters off Iwakuni in southern Honshu. In 1980, Edwin Reischauer, also a former US Ambassador to Japan, indicated that US warships carrying nuclear weapons visited Japanese ports under a verbal understanding conducted between the two governments in 1960. Reischauer added that he had always interpreted the introduction of nuclear weapons to mean "actual emplacement of nuclear weapons on Japanese soil or stockpiling weapons on Japanese soil." The introduction

of nuclear weapons, therefore, did not include port calls at Japanese ports by nuclear-armed warships or their passage through Japanese territorial waters.<sup>25</sup>

In 1966, Foreign Minister Miki attempted to tighten restrictions on US nuclear-armed ships entering Japanese waters. He stated that the operations of the US Seventh Fleet could be severely circumscribed near Japanese territorial waters unless nuclear weapons stored aboard the ships were off-loaded prior to visits to Japanese port facilities. In 1975, the leeway of government action was narrowed even further by Miki as Prime Minister when he announced that nuclear weapons would never be allowed on Japanese territory even in dire emergencies. Despite Miki's apparent hard line, successive Japanese administrations have never attempted to exercise authority to conduct on-board searches or verification, but rather have accepted the assurances of the United States that no major changes in deployment had taken place. This policy of looking the other way provided Japan with a hard-to-break defense against opposition charges of nuclear entry. The standard reply used in Japanese Diet Interpellations by the government is "Since the American Government has not requested prior consultation we are satisfied that no nuclear weapons are being brought into Japan."<sup>26</sup>

b. Geographic Scope of "Far East Clause"

Article 6 of the Mutual Security Treaty, as it applies to the geographic scope of the "Far East," has also been liberally interpreted by the Japanese. In February 1960, Japan defined the "Far East," as stated in a clause in Article 6, as the area north of the Philippine Islands and in and around Japanese territory, the territory under the control of the ROK (with

North Korea excluded), the territory of Taiwan, the offshore islands of Quemoy and Matsu, Takeshima Island, and the Soviet-occupied islands just north of Hokkaido--Shikotan, Habomai, Kunashiri and Etorofu, which are claimed by Japan.<sup>27</sup> Although Japan and the United States have never officially attempted to alter this meaning of the "Far East," the Sato Administration in 1965 held that the United States could use its bases in Japan "short of flying planes directly into combat for the Vietnam War because this conflict posed a threat to the peace and security in the Far East." In effect, Prime Minister Sato widened the 1960 definition and left open the possibility of future liberalization in the future of the Far East.

c. Joint Communiques

The importance of US bases in Japan has also been reconfirmed by inclusion of the so-called Korean clause in US-Japan joint communiques over the years. In 1969, at the signing of the Nixon-Sato communique concerning Okinawa, it was stated that the ROK was "essential" to Japan's security. At the Miki-Ford summit in 1975, this phrase was diluted slightly, but still tied Japan's stability to that of Korea and thus reconfirmed the importance of US base rights in Japan:

The security of the ROK is essential to the maintenance of peace on the Korean Peninsula, and the maintenance of the peace on the Korean Peninsula is necessary for the peace and security of East Asia, including Japan.<sup>28</sup>

d. Conclusion

Based upon Japan's liberal interpretation of prior consultation both in its basing and nuclear policies, and Tokyo's unilateral expansion of the Far East clause, it is likely that the United States could use Japanese bases as a staging and embarkation point to support a possible combat role on the Korean Peninsula. Nevertheless, these basing rights are not immutable and the Japanese Government might exercise a more obstructionist policy regarding prior consultation if one of the following events occurred in conjunction with US use of Japanese bases:

°Hot pursuit from North Korea;

°Uprisings from supporters of Kim Il-Sung in Japan;

°Soviet blackmail; and

°US threat or use of nuclear weapons on the Korean Peninsula.

(1) Hot Pursuit from North Korea

If the Japanese allowed US Air Forces to sortie from bases in Japan, the DPRK might try "hot pursuit" of US aircraft returning to Japan and cause damage to a Japanese city. This would cause a strong public reaction and might force the Japanese Government to rescind approval of US bases in Japan rather than involve the country in further damage or a war.



(2) Blackmail By the Soviet Union

In order to support its client state--the DPRK--the Soviet Union might threaten reprisals directly affecting Japan. The Soviet threats could include submarine warfare against Japanese ships or launching of SS-20s. This tactic might be taken by Moscow if it appeared that the US bases in Japan were giving the ROK a decided advantage in the conflict.

(3) Uprisings by Supporters of Kim Il Sung in Japan

The use of Japanese bases by the United States might result in an uprising of leftist groups, specifically supporters of Kim Il Sung. Although there are a total of some 700,000 Korean residents on Japan, less than one-third are supporters of Kim; but they are well organized and might be able to incite a general strike by labor unions, demonstrations, riots, and acts of sabotage by radicals and resident Koreans in sympathy with Pyongyang. Not only could such turmoil weaken the determination of the conservative Japanese Government, but if the radicals and North Korean elements resorted to acts of terrorism, the Japanese public and press might react by asking "why must we pay such a high price for helping the South Koreans?"<sup>29</sup>

(4) US Threat or Use of Nuclear Weapons on the Korean Peninsula

Washington's threatened use of tactical or strategic nuclear weapons on the Korean Peninsula would cause considerable alarm among the Tokyo leadership that the horrors of Nagasaki and Hiroshima might reoccur. To prevent such an escalation, the Japanese would apply significant pressure on

the United States, including the possible negation of basing rights or, at the very least, a far stricter interpretation of the prior consultation policy.

6. JAPANESE INDIRECT MILITARY SUPPORT TO THE ROK THROUGH US USE OF JAPAN'S MILITARY INDUSTRIAL INFRASTRUCTURE TO SUPPORT THE AMERICAN MISSION SHORT OF A DIRECT COMBAT ROLE

a. Japan-US Relations

Despite minor irritants in Japan-US relations in the postwar period, the relationship has been generally amicable and on a solid foundation. Bilateral trade between Japan and the United States amounts annually to over \$50 billion. Based upon the Mutual Security Treaty, the United States has called Japan "the cornerstone of its forward defense strategy in the Asia-Pacific region." Japan-US defense cooperation over the past decade has evolved from a protectorate-type relationship to a greater partnership. In November 1978, the US-Japan Guideline for Defense Cooperation specifically authorized bilateral planning studies of the defense of Japan and of bilateral cooperation on East Asian emergencies outside of Japan which might threaten Japanese security. In addition, over 80 US-Japanese naval exercises have taken place since 1955, including sophisticated antisubmarine and anti-air drill with aircraft carriers and attack nuclear submarines. In March 1983, for the first time, a US in-training exercise flew sorties from South Korea into Nagasaki Airport for refueling purposes via a US aircraft carrier.

b. Conclusion

Because of the close bilateral relations, Japan could provide valuable assistance to the United States if war broke out on the Korean Peninsula. However, certain areas of assistance, especially those relating to direct support from the Japanese Self-Defense Forces to the US Forces in Japan, would be hindered by certain legal constraints. Areas where Japan may assist the United States include the following:

(1) Increased Maintenance Costs and Upkeep of US Bases Facilities

The Status of Forces Agreement (SOFA) between Japan and the United States provides the regulations by which US Forces are to be stationed in Japan. Article 24 of SOFA provides that the United States will bear all expenditures incident to the maintenance of US Armed Forces stationed in Japan. In early 1980, Japan assumed some of the labor expenses of the over 20,000 Japanese employed by US Forces. The expenses included welfare payments and portions of salaries that exceeded the standards for public service personnel. During wartime on the Korean Peninsula, Japan might be persuaded to either increase its expenditures or fund all maintenance and labor costs associated with the upkeep of US bases.

Article 24 of SOFA also stipulates that Japan must provide facilities including housing to US Forces in Japan. These might be upgraded or increased in a crisis on the Peninsula. Such things as refurbishment of older housing or construction of new barracks might be undertaken.

## (2) Technology Transfer/Weapons Export

In January 1983, Japan and the United States concluded a major agreement to provide military technology to the United States, a major turn-about of the country's basic policy of firmly restricting the export of weapons and military know-how to any country. This new agreement might be particularly helpful to the United States, especially if the war on the Korean Peninsula was a protracted one. Since the signing of the liberalized Technology Transfer agreement, the United States has shown interest in technology on laser-guided antitank missiles, optical fibers, and materials for radar-proofing (STEALTH Technology). In March 1984, Hiroshi Kitamura, Foreign Ministry Chief of the North American Bureau, indicated that under the terms of the agreement, Japan may also provide technology on ICBMs and B-52s.<sup>30</sup>

The Japanese Government has ruled, nevertheless, that the United States cannot transfer its military-related technology obtained from Japan to a third country without Japan's prior approval. Such approval will be given only on a case-by-case basis.

## (3) Shipping

The United States might be able to contract with a Japanese shipping company to provide US Forces in Japan with critical commodities like oil. Such ships might sail under a neutral country's registry (for example, Panama's) and then off-load their supplies prior to entering Japanese territorial waters. Japanese leaders would resist the leasing of Japanese ships for use in the Sea of Japan as being too dangerous.

#### (4) Repair and Maintenance

Although the repair and maintenance of foreign military equipment on Japanese soil contravenes Japanese law, in March 1984 the head of the Treaties Office of the Ministry of Foreign Affairs indicated that the stationing of Japanese repair workers aboard the USS Midway outside Japanese territorial waters did not contravene Japanese law and might be provided for under the Mutual Security Treaty and the Status of Forces Agreement.

#### (5) Intelligence Sharing

Formal channels of communications and consultations between Japanese and American uniformed personnel are well established and longstanding. Military information is routinely exchanged by both countries' Defense Attaches. Liaison on defense matters is also conducted through the US-Japan Security Consultative Committees. In addition, American and Japanese military personnel have fashioned a closely-knit informal human intelligence network.

##### (a) Radar Sharing

Japan-US radar networks are closely interwoven with the Air Self-Defense Forces. One observer has elaborated on this close relationship, thus:

In a closed panel discussion of Japan's defense problems a military specialist remarked that the SDF was a mini-size American force in weapons and organization and command. He recalled that in 1965

when an unknown plane crossed the 38th Parallel in Korea the Japan Air Self-Defense Force planes scrambled not on the order of their own commander but at the command of the American Fifth Army.<sup>31</sup>

The Japan Air Self-Defense Force maintains around-the-clock surveillance of aircraft flying over Japan and in surrounding airspace from its 28 radar sites across the country. In addition, the Japan Maritime Self-Defense Force deploys naval vessels in the straits of Tsushima, Tsugaru and Soya. The surveillance of the Soya Strait was added in 1983. The United States is integrated into the Japanese surveillance network and Japanese intelligence efforts would be most beneficial to US Forces in Japan in case of an outbreak of war on the Korean Peninsula.

#### 6. Dual-Use Exports/Credits

Both dual-use exports and credits have been discussed in the section on Japanese assistance to South Korea. Based upon Japan's close relationship with the United States, the export of dual-use items and extension of credits would be most helpful to the US effort in Korea.

#### 7. Areas in which the US Would Like Japanese Support but Where Support May Not Be Forthcoming Due to Legal Constraints

As stipulated by American representatives of the Japan-US Security Consultative Committee, there are five categories of assistance that the United States would like Japan to provide US Forces during an emergency on the Korean Peninsula:

(1) aid in the transport of personnel and materials;

(2) rescue and search operations;

(3) medical care;

(4) military equipment repair; and

(5) procurement of ammunition.

According to US estimates, these five categories would require further planning and legal changes in at least 30 areas before Japanese support would be forthcoming.

## NOTES

1. Article 9 states: "Aspiring sincerely to an international peace based on justice and order the Japanese people forever renounce war as a sovereign right of the nation and the threat on the use of force as a means of settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces as well as other war potential will never be maintained. The right of belligerency of the state will not be recognized."
2. Japan Defense Agency, The Defense of Japan, 1984. Tokyo, 1984, p. 59.
3. Ibid; p. 59.
4. Foreign Broadcast Information Service, Daily Report: Asia-Pacific, 18 September 1984, p. C2.
5. Ibid; p. C3.
6. "Pacifism Reigns in Japan as US Pushes It to Rearm," Christian Science Monitor, 23 March 1983, p. 1.
7. "Public Opinion Poll on the ROK," Sankei Shimbun, 28 December 1978, p. 1.
8. The Defense of Japan, 1984, p. 59.
9. Ibid; p. 58.
10. FBIS/Asia-Pacific, 13 March 1981, p. C4.
11. John Endicott, Japan's Nuclear Option: Political, Technical, and Strategic Factors. New York: Praeger Publishers, 1975, pp. 44-45.
12. FBIS/Asia-Pacific, 20 July 1984, p. C4.



13. "Results of Public Opinion on Foreign Policy Released," Joint Publication Research Service (JPRS), Japan Report, no. 85, 3 February 1985, p. 4.
14. FBIS/Asia-Pacific, 3 February 1985, p. C3.
15. Hong Kim, "Japan-South Korean Relations after the Park Assassination," Journal of Northeast Asian Studies (Washington, D.C.), December 1982, p. 86.
16. "Government of Japan's Unified View," New York Times, 7 January 1983, p. A2.
17. Defense of Japan, 1984, p. 59.
18. "Interview with Foreign Minister Won-Kyung Lee," Journal of Northeast Asian Studies (Washington, D.C.), no. 1, Spring 1984, p. 58.
19. Mainichi Shimbun, 27 February 1976, p. 1.
20. For further information on dual-use items see Kent Calder, "The Rise of Japan's Military-Industrial Base," Asia Pacific Community (Tokyo), Summer 1982, pp. 33-35.
21. Information on Japan's intelligence-sharing with Korea is derived from Japan's Quest for Comprehensive Security, J.W.M. Chapman, ed. New York: St. Martin's Press, 1982, p. 115.
22. Tomohisa Sakanaka has estimated that the number of Korean refugees entering Japan might reach a million if North Korea took control of the South. See Tomohisa Sakanaka, "Military Threats & Japan's Defense Capability," Asian Survey, vol. 20, no. 7, July 1980, p. 768.
23. Article 6 states: "For the purpose of contributing to the security of Japan and the maintenance of international peace and security in the Far

East, the United States of America is granted the use by its land, air, and naval forces of facilities and areas in Japan." See: US Treaties and Other International Agreements, vol. 2, TIAS, 4509, 1960, p. 1634.

24. For a full elaboration of the meaning of "prior consultation" see: US Security Agreements and Commitments Abroad: Japan and Okinawa, Hearings before the Subcommittee on US Security Agreements and Commitments Abroad, 91st Congress, 2nd Session, part 5, 26-29 January 1970, pp. 1435-1438.
25. FBIS/Asia-Pacific, 22 May 1981, p. C1.
26. Daniel Okimoto, "Chrysanthemum Without the Sword," in Northeast Asian Security After Vietnam, Martin Weinstein, ed. Urbana, Ill.: University of Illinois Press, 1982, p. 138.
27. Fred Greene, Stresses in US-Japanese Security Relations. Washington, D.C.: Brookings, 1975, p. 37.
28. Ibid.
29. Such a possibility has been posited by Hideaki Kase, "South Korea's Pivotal Role in Japan's Defense," in Strategy and Security in Northeast Asia, Richard Foster, ed. New York: Crane Russak, 1979, p. 148.
30. FBIS/Asia-Pacific, 2 March 1984, p. C1.
31. John K. Emmerson, Arms, Yen, Power: The Japanese Dilemma. New York: Dunellen, 1971, p. 142.

## CONSTITUTIONAL AND LEGAL ASPECTS OF JAPANESE SUPPORT

## 1. The Japanese Constitution of 1947 and Defense Policy

Article 9 of the Japanese Constitution of 1947  
states:

. . . the Japanese people forever renounce war as  
a sovereign right of the nation and the threat of  
use of force as a means of settling international  
disputes.

In order to accomplish the aim of the preceding  
paragraph, land, sea and air forces, as well as  
other war potential, will never be maintained.  
The right of belligerency of the state will not be  
recognized.

This article has been the object of discussion and controversy  
in Japanese courts, defense policy, Diet politics and public  
opinion since the creation in 1950 of the National Police Reserve  
(called the National Safety Force in 1952 and renamed the Ground,  
Maritime and Air Self-Defense Forces in 1954).<sup>1</sup> Although the  
Constitution gives Japanese courts the power of judicial review,  
the Supreme Court is not a constitutional court and does not  
determine the constitutionality of laws in the abstract, apart  
from specific cases brought by parties with standing to litigate.  
The Supreme Court has in specific cases upheld the  
constitutionality of the U.S.-Japan Security Treaty while  
reversing lower court decisions that found the Self-Defense Forces

(SDF) unconstitutional. In its doctrine in the Sunakawa Case (1959) that defense issues are inherently political questions, to be decided by the Diet and not the courts, the Supreme Court has implicitly accepted the constitutionality of the SDF. Another major reason for lack of judicial review of defense policies is that few defense policies have been written into law. Even should the Supreme Court at some future date find some law, regulation or state action related to the SDF or to defense policy to be in violation of Article 9 of the Constitution, the short-term impact of such a decision on defense is likely to be limited. In Japanese law, judicial precedents are usually tied to specific statutes or regulations and are not in practice generally binding on lower courts. Moreover, there is no agreement among Japanese legal authorities or courts whether courts may order government agencies to remedy actions that have been ruled unconstitutional.<sup>2</sup> There is usually no change in government policy during the period of several years that is required to try cases through the Supreme Court level.

[Sources:

1. Theodore McNelly, "The Constitutionality of Japan's Defense Establishment," in James H. Buck, Ed., THE MODERN JAPANESE MILITARY SYSTEM, (Beverly Hills and London: 1957), pp. 99-112; D.C.S. Sissons, "The Pacifist Clause of the Japanese Constitution, Legal and Political Problems of Rearmament," INTERNATIONAL AFFAIRS (Oxford) Vol. 37 1961, pp. 45-59.

2. Dan Fenno Henderson and John Owen Haley, comp. and Eds., LAW AND THE LEGAL PROCESS IN JAPAN: MATERIALS FOR AN INTRODUCTORY COURSE ON JAPANESE LAW (1978 edition) (Seattle, Washington: 1978), pp. 357-361. Lawrence W. Beer, "Constitutional Revolution in Japanese Law, Society and Politics," MODERN ASIAN STUDIES, 16.1 (February, 1982), pp. 47-48. Theodore McNelly, "The Constitutionality of Japan's Defense Establishment," p. 102.]

## 2. The Role of Customary Constraints on Defense Policies

Customary constraints on Japanese defense policies are not articulated by either the courts or the Diet, but rather by high government officials who claim to interpret the constitution in the course of defending or announcing specific defense policies. Since these interpretations are policy and not law, they are not subject to judicial review. Such policies include:

- the doctrine of exclusive defense
- the principle of civilian control
- prohibition of conscription
- non-dispatch of forces overseas
- the three non-nuclear principles
- the three principles concerning non-export of military goods

Many innovations in defense policy having a bearing on U.S.-Japan defense cooperation are explained in the language of constitutional interpretation. For example, in April 1981 Defense Agency Director General Joji Omura told a Diet committee that it was constitutionally permissible to include the seas between Guam

and the Philippines in Japan's defense area. area.<sup>3</sup> In March 1981 an official of the Cabinet Legislation Bureau told a Diet committee that the constitution did not prevent the search of neutral ships suspected of transporting arms to an enemy at a time of national emergency. ["Time of emergency" is an established Japanese euphemism for war.]<sup>4</sup>(See Table 1 for a partial listing of such public statements.)

[Sources:

3. KYODO in English, FBIS/AP, 7 April 1981.

4. KYODO in English, 11 March 1981, FBIS/AP, 12 March 1981.]

The result of such marginal adjustments to customary doctrine during the period from the mid-1970s to the mid-1980s was a weakening relationship between defense policies and purely constitutional issues. Once a policy was justified in terms of constitutional interpretation, subsequent explanations often interpreted the interpretation and did not mention the constitution directly. For example, in December 1982 Prime Minister Nakasone told a Diet committee that Japanese blockade of the three straits (Tsushima, Tsugaru and Soya) was within the limits of the exclusive defense doctrine. In December 1984, the Foreign Minister stated that it is not a violation of the three non-nuclear principles to provide home ports to U.S. nuclear powered aircraft carriers. Similarly, in February 1985 Prime

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Minister Nakasone told Diet members that Japan-based U.S. communications facilities that might transmit nuclear attack messages do not violate the non-nuclear principle. Officials also justify policies or SDF activities by interpreting the law or Diet resolutions. For example, in August 1984 an official told a Diet committee that Japan could exchange visits of defense officials with South Korea even in the absence of a security treaty with Seoul. In February, 1985, Nakasone stated that SDF use of U.S. communications satellites was not inconsistent with a Diet resolution limiting the use of outer space to peaceful purposes.

### **3. Routine Changes in the Self-Defense Forces Laws**

The Japanese Government periodically revises the Self Defense Agency Law, the Self Defense Agency Establishment Law, and other ordinances and regulations governing the operation of the SDF. Revision is accomplished by laws , by cabinet ordinances, or by ordinances of the Prime Minister or various ministries. Of these, only laws are enacted by the Diet. Several dozen such minor revisions have taken place since enactment of the two basic laws in 1949. Many of these changes have implications for the size of particular units or other administrative matters, but none of the changes through March 1985 have implications for military emergencies or for Japanese cooperation with the United States in a regional military crisis.

#### **4. The JDA Study on Legislative Change Concerning a Military Emergency**

Since 1977 there has been concern within the SDF and the government that the changes in defense policy that have been justified by interpretation of the constitution and the laws are not enough to ensure adequate operation of the SDF in the event of an armed attack on Japan. In August of that year the JDA secretly began research on legal problems related to military emergencies.<sup>5</sup> In July of 1978 General Hiroomi Kurisu, Chairman of the Joint Staff Council, publicly criticized the cumbersome legal procedures that he said handicapped SDF commanders in time of war and stated that commanders might have to act outside the legal chain of command to return fire in their own defense. Kurisu was forced to resign for violating the principle of civilian control, and another official subsequently told reporters that the proper response of Japanese armed forces in such a situation was "flight."<sup>6</sup> In September, however, it was announced that the JDA would conduct a prolonged study of laws governing the activation and operation of the SDF in a military emergency. The plan outlined three categories of law to be studied: 1) laws under the jurisdiction of the JDA, such as the SDF Law; 2) laws under the jurisdiction of other government agencies; and 3) other laws, including those governing evacuation of civilians, treatment of prisoners of war and other questions. The first interim report of the government to the Diet, covering laws in the first category, took place in 1981. In October 1984 the government presented its interim report on laws in the second



category to the Diet. There was in scheduled date for the third interim report as of the publication of DEFENSE OF JAPAN, 1984.<sup>7</sup> As of March 1985 the government had presented no bills to the Diet to enact any of the proposed changes.

[Sources:

5. Japan Defense Agency, DEFENSE OF JAPAN 1983 (Tokyo: 1983), p.278.

6. William M. Carpenter and Stephen P. Gilbert, "Japanese Views on Defense Burden Sharing," COMPARATIVE STRATEGY, (New York) vol. 3, March 1982, p. 264.

7. Japan Defense Agency, DEFENSE OF JAPAN 1984 (Tokyo: 1984), p. 240.]

5. The 1981 Interim Report on Emergency Legislation

The emergency legislative studies are specifically directed at Japan's self-defense, and the 1981 interim report does not explicitly touch on matters of Japanese military cooperation with the United States under the "Far Eastern emergency" provisions of Article 6 of the Mutual Security Treaty. However, some of the proposed changes are potentially important because if enacted they would enhance the operational and political autonomy of the SDF. For example, one of the proposals would make it possible for the SDF to requisition private land and other resources for troop

movements and would streamline legal procedures for doing so. Another important proposal would permit the SDF to use its weapons under attack while still in a preliminary alert condition. Under the SDF Law of 1949, SDF troops may not use their weapons for self defense until they are mobilized by the Prime Minister, who must seek approval for mobilization from the Diet. A preliminary alert mobilization order requires only the approval of the Prime Minister. The proposals also strengthen measures protecting SDF equipment and storage facilities. Enactment of these proposals into law would be an important indicator of a shift in defense policy, mobilization capability and Japan's political climate. However, such a shift would not necessarily mean an increased willingness on the part of the Japanese government, Diet or people to provide assistance to U.S. forces engaged in military activities outside of Japan.

## **6. The 1984 Interim Report on Emergency Legislation**

As the JDA was completing its studies on laws in the second category in the spring and summer of 1984, the government took steps to publicize consultations with the ministries and agencies affected, and to emphasize the role of consensus in formulating proposals for legislative change. Some consultations were held in April; the Diet held preliminary discussions on troop transportation in June; and the government presented the full report to the Diet in October.

The proposed changes affect 11 laws in the following areas:

- movement of troops (GSDF, MSDF, ASDF)
- land use
- building materials and construction
- power and communications
- handling of explosives
- public health and medicine
- handling of fatalities
- accounting and management.<sup>8</sup>

[Sources:

8. "Emergency Law Study Interim Report: Diet Discusses Troop Transport, Other Issues" (In Japanese) YOMIURI SHIMBUN 15 Jun p. 1; "Emergency Law Study: JDA Requests Cooperation of Ministries" MAINICHI SHIMBUN, 8 April 1984, p. 2. "Gist of Emergency Legislation Interim Report," YOMIURI SHIMBUN 16 October 84 (pre edition), p. 2.]

**7. Legal Studies on Japanese Logistical Support of the United States**

In January 1982 the Director General of the Defense Agency stated in a televised debate that the government had agreed with the United States to conduct a study of legislation affecting Japanese logistical support for US forces in the event of an emergency in the Far East under the terms of Article 6 of the U.S.-Japan Mutual Security Treaty. The study was to be conducted by officials of the Defense Agency and the U.S. Embassy in Tokyo. The agreement came out of sessions of the Japan-U.S. Security

Consultative Committee, and was based on the Guidelines for Defense Cooperation approved by the Japanese Cabinet in November 1978.<sup>9</sup> The logistical study was distinct from other joint studies on the defense of Japan under Article 5 of the Security Treaty, such as the joint operations plan study, completed in draft form in the summer of 1981, and the sealane defense study nearing completion in March 1985.<sup>10</sup>

[Sources:

9. "Law Change Planned for Military Support to US," KYODO in English, in FBIS/AP, 12 January 1982.

10. Japan Defense Agency, DEFENSE OF JAPAN 1984 (Tokyo: 1984), p. 170; LTC Murata, J-5 East Asia. Phone interview 14 March 1985 (afternoon; James Auer. Phone interview 14 March 1985 (afternoon).]

The United States sought research in support of cooperation in some thirty areas that would need planning and legal change before Japanese logistical support (officially termed "facilitative assistance") to U.S. troops based in Japan could be forthcoming. Areas of support cited by the Director General in 1982 included transport of men and materiel, search and rescue operations, medical support, equipment repair and ammunition procurement.<sup>11</sup> Japan signed a multilateral treaty in 1979 that considerably enlarges the legally permissible scope of search and rescue

operations. The annual report of the Maritime Safety Agency (MSA) for 1982 states that the MSA has responsibility for search and rescue operations to a distance of from 1,000 to 1,200 nautical miles from Japan.<sup>12</sup>

[Sources:

11. Murata interview; "Law Change Planned."

12. Study Society of International Maritime Safety. ANUAL REPORT ON MARITIME SAFETY (Tokyo: 1982), p. 14.]

The number of laws requiring amendment to permit facilitative assistance is not known. It is sometimes stated that the SDF Law of 1949 prohibits facilitative assistance. In March 1985 a Japanese Embassy official in Washington stated privately that the Material Management Law under the jurisdiction of the Ministry of Finance (enacted in 1956) prohibits transfer of government-owned movable property to other countries.<sup>13</sup> This law governs sale and transfer of all government property except for financial instruments and items specified in certain other laws.<sup>14</sup> Another relevant law is the State Property Law (enacted in 1948), which governs disposition of state-owned immovable property, including ships and aircraft.<sup>15</sup> As of March 1985, none of these three laws prohibits such assistance. However, in the context of Japanese law, all would probably need revision to explicitly authorize facilitative assistance. Full legal support of facilitative

assistance would probably also require some changes in many or most of the laws mentioned in the two JDA interim reports on emergency legislation.<sup>16</sup>

[Sources:

13. Shigemuro Masahiro (GSDF official), Embassy of Japan. Phone interview 14 March 1985 (afternoon).

14. BUPPIN KANRI HO (Material Management Law), IWANAMI ROPPO ZENSHO (Iwanami's Complete Six Laws) (Tokyo: 1984), pp. 308-309.

15. KOKUYU ZAISAN HO (State Property Law), IWANAMI ROPPO ZENSHO (Iwanami's Complete Six Laws) (Tokyo: 1984), pp. 305-307.

16. "Law Change Planned".]

As of March 1985 the Japanese Government was still studying legal changes necessary for facilitative support to U.S. forces in Japan. Jurisdictional and other disputes within the Japanese Government contributed to slow progress, with only 2 of some 30 topics completed.<sup>17</sup>

[Sources:

17. Murata interview.]

8. Sealane defense

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Since the highly publicized statement of Prime Minister Suzuki before the Washington Press Club in 1981 that Japan would endeavor to defend its sealanes to a distance of 1,000 nautical miles, there have been numerous official and semi-official explanations of the Japanese position, and on the related question of using a blockade or mines to interdict hostile shipping in the Tsushima, Tsugara or Soya Straits. Pending release of the Japanese Government's study of this subject, scheduled for summer of 1985, the fullest official statement is found in DEFENSE OF JAPAN 1984. (See Table 2).

There are no known official statements which affirm a sealane defense role or straits blockade role, alone or in concert with the United States, in a conflict situation that does not involve an attack on Japan or Japanese shipping. Official statements are careful to specify that there must be such an attack if Japanese actions are to be consistent with the constitutional principle of exclusive defense.

Japanese doctrine and practice of law of the sea place strong emphasis on freedom of navigation in time of peace. Japan is a signatory to the Geneva Convention on the Territorial Sea of 1958, which allows innocent passage of warships through territorial waters, and has taken the position in subsequent conferences that there is no need for prior authorization.<sup>18</sup> Japanese Maritime Defense Forces have shown extreme circumspection in confronting even direct violation of Japanese territorial waters by Soviet

warships.<sup>19</sup>

[Sources:

18. "Annual review of Japanese Practice of International Law," in THE JAPANESE ANNUAL OF INTERNATIONAL LAW (Tokyo) no. 25, 1982, pp. 100-101.

19. Ko Nakamura, "The Passage Through the Territorial Sea of Foreign Warships Carrying Nuclear Weapons," THE JAPANESE ANNUAL OF INTERNATIONAL LAW (Tokyo) No. 25, 1982, pp. 1-10.]

In the event of a regional military crisis involving U.S. troops stationed in Japan, Japanese sealanes might become the object of a quarantine directed at purely military resupply. International law provides some recognition to such a quarantine as a collective sanction in the sense of Article 42 of the U.N. Charter, although there is no clear agreement on application of such a quarantine to third parties.<sup>20</sup> Japanese discussion of sealanes stresses their importance as economic lifelines,<sup>21</sup> and there is no public indication of a willingness to participate in or help to defend military supply lines for a conflict in which Japan has not been attacked. Such a quarantine, perhaps utilizing a clearcert system to allow civilian shipping similar to that used by the United States in 1962 in the Cuban quarantine, could be extremely effective politically, because it would be likely to provoke divisive debate within Japan, without arousing patriotic



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feelings through a direct attack on Japanese forces or economic survival.

[Sources:

20. Ludwig Weber, articles on "Blockade," and "Pacific Blockade," in ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, vol. 3 (New York: North-Holland Publishing Company, 1982), pp. 47-51; 51-53.

21. BOEI NENKAN 1983 (Defense Annual 1983) (Tokyo: Boei nenkan kankokai, 1983), pp. 114-117.]

## 9. Assessrent

Direct assessment of Japan's practical and political readiness to provide facilitative assistance to U.S. forces in Japan in the event of a regional military emergency is difficult. However, it is possible to examine several important questions indirectly on the basis of the legal and constitutional questions discussed above and Japanese Government handling of several defense related studies.

**Constitution and Judicial Review:** The existence of numerous legislative and capability studies conducted by the GOJ from the late 1970s to the mid-1980s shows that Japanese defense needs may have exceeded the marginal adjustments that are possible through customary interpretation of the constitution and related defense

doctrines. New legal enactments could contribute to a period of judicial activism, although there are limits to the impact that judicial decisions may have on policy or government action. Purely constitutional controversy in the courts over new defense legislation is likely to take many years and to have little short-term impact on the policy of the GOJ.

**Public opinion:** Japanese Government statements that interpret laws and the constitution are the principal means by which the Japanese public becomes aware of many activities and plans of the SDF, including those that might enhance the capability of the SDF to provide intelligence, logistical and other forms of facilitative assistance to the United States. Many of these interpretive statements repeatedly stretch the previously accepted meaning of constitutional and legal constraints and thus have an important role in consensus building and the raising of public consciousness on defense policies and issues. Detailed coverage of the interim reports on the emergency legislation studies performs the same function. Ultimately, the best assessment of Japanese public opinion is likely to be that of the Liberal Democratic Party.

**Emergency legislation studies:** The Japanese Government may be expected to carefully assess the potential political costs and risks required to convert these defense related proposals into law through the legislative process in the Diet. Attempted passage of some or all of these measures will provide an important test of

Japanese resolve on defense questions. The apparent conclusion of the Japanese Government as of March 1985 was that the Diet was not yet ready to implement any of the proposed changes. If these proposals, which are purely defensive in nature, cannot be successfully advanced in the Diet, legislative proposals related to facilitative assistance is likely to experience even more difficulty.

**Facilitative assistance study:** The lack of progress made in these studies reflects a low Japanese Government priority as well as a sound political assessment that the subject is not ripe for public consideration. Two other studies recommended by the joint U.S.-Japan Security Consultative Committee, which deal with the defense of Japan under Article 5 of the Mutual Security Treaty, have received adequate manpower support, have not encountered excessive intra-governmental jurisdictional conflict, and are complete or nearing completion. The emergency legislation studies have achieved consensus within the government and have received extensive public scrutiny in the press and in the Diet over a period of 7 years, from 1978 to 1985.

**Sealanes defense:** There is strong evidence in repeated official and semi-official statements that the Japanese government understands sealane defense purely in terms of the defense of Japan. In the event of an emergency situation in the Far East under Article 6 of the Mutual Security Treaty, it is extremely unlikely that Japan would be willing to provide military support

within the 1,000 nautical mile sealane radius against a naval Cuba-style quarantine directly solely at resupply of U.S. bases and forces in Japan. Intelligence and surveillance support, though politically sensitive, and search and rescue operations of a humanitarian nature could be carried out in support of U.S. operations to the extent they did not involve Japanese forces in fighting.

#### Table 1

##### Official Statements Interpreting the Law or Constitution on Issues of Importance for Facilitative Assistance

1980 Former JDA Director General Kichizo Hosoda states that Japan may cooperate with the United States in blockading the three straits only after Japanese territory is attacked. (Mike Mochizuki and Michael Nacht, "Modes of Defense Cooperation," in U.S. JAPAN RELATIONS IN THE 1980S; TOWARDS BURDEN SHARING (Annual Report 1982, The Program on US-Japan Relations, Center for International Affairs, Harvard University) (Cambridge, Massachusetts), pp. 129-137. p. 133.

Mar 1981 An official of the Cabinet Legislative Bureau tells the Budget Committee of the House of Councillors that the Maritime Self Defense Force's right to search foreign vessels transporting

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weapons to the enemy is within the right of self-defense. The official's "statement follows the government's consistent interpretation of the Constitution that the Constitution renounces the right of belligerency in an ordinary sense but the nation can take necessary measures for self-defense. Under the interpretation, the nation in an emergency can search neutral ships suspected of transporting arms to the enemy and capture them when they resist. KYODO in English 11 Mar 81, in FBIS 12 Mar 81.

Apr 1981 Defense Agency Director General Joji Omura tells a Diet committee that it is constitutionally permissible to include the seas between Guam and the Philippines in Japan's defense area. KYODO in English, in FBIS 7 Apr 1981.

Nov 1981 A JSP Diet member asks whether attacks on a U.S. warship or warships in the Japanese territorial sea are a requisite for Japan's use of its self-defense right. MOFA Treaties Bureau chief Takakazu Kuriyama replies in the affirmative. FBIS 16 Nov 1981.

Dec 1982 Prime Minister Nakasone tells a Diet committee that Japanese blockade of the three straits (Tsushima, Tsugaru and Soya) is within the limits of the exclusive defense doctrine.

Dec 1982 JDA Director General Kazuo Tanikawa tells the Budget Committee of the House of Councillors that Japan will possibly blockade the passage of foreign vessels through its three straits

within the minimum extent necessary to Japanese defense if it is unavoidable. Tanikawa states that Japanese Self-Defense forces will not be dispatched to the three straits unless a foreign country attacks Japan. Prime Minister Nakasone tells the committee that the possible blockade of the three straits against foreign vessels is within the limits of Japan's exclusive defense line. KYODO in English, in FBIS 21 Dec 82.

Feb 1983 Prime Minister Nakasone discusses the constitution and conscription with the House Budget Committee. "Under the present constitution as well, a conscription system is not constitutional, in our judgment and in our thinking . . . I believe that under the present constitution it may not be recognized. We are not thinking of having a conscription system or anything of the kind . . . " BOEI NENKAN 1984 (Defense Annual 1984) (Tokyo: 1984), p. 169.

Feb 1983 JDA Director General Tanikawa discusses Japanese defense of allied forces before the House Budget Committee: "For us to use force to stop an armed attack against a foreign country having a close relationship with our country, despite the fact that there was no direct attack upon our own country, would be an act that is not recognized by the constitution." BOEI NENKAN 1984 (Defense Annual 1984) (Tokyo: 1984), p. 170.

Feb 1984 A government spokesman acknowledges the existence of an unpublished air traffic control agreement giving priority to

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U.S. military aircraft. MAINICHI SHIMBUN (Tokyo) 22 Feb 1984, p. 3.

Mar 1983 Prime Minister Nakasone states that the Maritime Self Defense Force may constitutionally protect or escort foreign civilian vessels carrying goods to Japan in wartime. JAPAN TIMES, March 10, 1983, cited in William T. Tow, "Japan's Rearmament: The ASEAN Factor," ASIA PACIFIC COMMUNITY Winter 1984, No. 23, pp. 11-28. p. 16.

Mar 1984 The Head of the Treaty Office, MOFA, tells a Diet committee that Japan may provide labor to U.S. forces outside of Japan within the scope of the Mutual Security Treaty and the Status of Forces Agreement. The testimony followed Diet inquiries concerning the July 1980 case of Japanese repair personnel on board the Midway when it sailed from Sasebo to Subic Bay. MAINICHI SHIMBUN (Tokyo) 28 Mar 1984, p 1.

Aug 1984 A Korean newspaper reports the Japanese government states that the exchanges of visits and views between Korea and Japanese defense officials on defense issues will pose no problem regardless of whether there is a treaty. The comment is made in response to a Japanese opposition party query about the legality of exchanges of military information. CHOSON ILBO, in U.S. Embassy Press Translations, 22 August, 1984, p. 1.

Oct 1984 An article in PACIFIC DEFENSE REPORTER notes that

government interpretations of the constitution would bar Japan from sending forces overseas and also prevent Japan from bottling up the straits in the event of hostilities between the US and the Soviet Union, "unless the Soviets had first launched an attack on Japan." PACIFIC DEFENSE REPORTER (Melbourne) Oct 1984, p. 1.

Dec 1984 Foreign Minister Shintaro Abe tells a Diet committee that Japan would not deny home ports to US nuclear-powered aircraft carriers simply because they are nuclear-powered. Abe also notes that the government may not refuse housing to crewmen or dependants because the ships are nuclear-powered. KYODO in English, in FBIS 13 Dec 84.

Feb 1985 Prime Minister Nakasone tells Diet members that U.S. communications facilities that might transmit nuclear attack messages do not violate the non-nuclear principle. KYODO in English, in FBIS 11 Feb 1985.

Feb 1985 Prime Minister Nakasone tells a Diet committee that U.S. and Japanese naval forces should be linked by satellite for joint exercises or emergencies. JIJI PRESS, in FBIS 21 Feb 1985 (FOUO).

Feb 1985 Prime Minister Nakasone states that SDF use of U.S. communications satellites is not inconsistent with a Diet resolution limiting the use of outer space to peaceful purposes. Nakasone also states that this view should apply to reconnaissance satellites. KYODO in English, in FBIS 7 Feb 1985.



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Table 2

Japanese Sealane Defense Doctrine

1983 The Defense Agency White Paper for 1983 discusses the concept of sealane defense. [Note: The section, "Capability to Protect Sea Lines of Communication," was not in the 1982 or 1984 edition of the White Paper.]

The White Paper makes the following points:

1. "Sea lane defense" refers to "Japan-U.S. joint maritime operations in case of an armed attack against Japan."
2. Japan has been gradually building up its capability to "provide protection of sea lines of communication in sea waters extending to about 1,000 nautical miles in the surrounding waters . . . when an armed attack takes place against Japan." ["Sea routes" would be designated in event of an armed attack against Japan, not earlier. Japan at present has in mind sea routes to the southwest and southeast necessary for the safety of maritime transportation.]
3. "Constitutionally, the geographical scope where Japan can execute force for the self-defense is not necessarily limited to

Japanese territory, territorial waters and territorial airspace, but could be extended to open sea and airspace."

4. "Generally speaking, it is expected that the United States would offer protection of sea lines of communication in sea waters beyond 1,000 nautical miles . . ."

5. Japanese ships are not authorized to repel attacks on U.S. ships in the absence of an armed attack on Japan.

6. Japan may not use force to repel attacks on foreign ships in the open seas simply on the grounds that the ships are carrying goods to Japan. "However, as a matter of theory, there is an undeniable possibility that" foreign ships might be attacked as part of an attack on Japan by a third power. The SDF might repel such attacks on shipping as a necessary minimum for the defense of Japan, within the framework of individual right of self-defense. Decisions will be made on a case to case basis.

7. In the event of an armed attack on Japan, "it is considered feasible that . . . the SDF will take steps to impede the passage of the straits by the ships" of the attacking nation. These steps may include mine-laying. Impediment of straits passage . . . is limited to use only when an armed attack takes place against this country. . . even if the United States asks for such steps in the absence of an armed offensive against Japan, it is not recognized under the Constitution and, therefore, cannot be for the SDF to

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execute force to prevent foreign ships from going through the straits." DEFENSE OF JAPAN 1983 (Tokyo), 1983, pp. 75-77.

1983 A defense think tank funded by the government publishes its annual volume ASIAN SECURITY. A section of the study explains the Japanese government view of the question of collective versus individual self-defense: "Japan has adopted the position, based on an interpretation of its constitution, that no right of collective self-defense shall be exercised. Accordingly, Japan finds it difficult to assimilate the idea that military duties should be shared between allies --which takes collective self-defense for granted. The government thus takes a position based on the right of individual, that is national, self-defense: the Self-Defense Forces can defend US forces only if the need arises while the two forces are engaging in joint operations for the defense of Japan. It is in this context that Japan envisages cooperative action with the United States to blockade the three straits, an operation which the United States sees as required for the defense of sea lanes. It would thus be difficult for Japan to meet a US requirement for blockading the three straits if this was for the defense of sea lanes as part of a conflict on a global scale." ASIAN SECURITY 1983 (Tokyo: Research Institute for Peace and Security, 1983), p. 238.

Feb 1983 Prime Minister Yasuhiro tells the Budget Committee of the House of Representatives that Japan would blockade its straits only when attacked. He also stated that it would be up to Korea

to decide whether to close its side of the straits of Tsushima.  
KYODO in English, in FBIS 4 Feb 1983.